

AMENDED IN SENATE MAY 13, 2013

AMENDED IN SENATE APRIL 25, 2013

AMENDED IN SENATE APRIL 9, 2013

**SENATE BILL**

**No. 218**

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**Introduced by Senator Yee**

February 11, 2013

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An act to amend Sections 4935, 4955, 4955.1, 4955.2, 4956, 4960.2, 4961, 4965, 4966, 4967, and 4969 of, to add Section 4964.5 to, and to add Article 3 (commencing with Section 4950) to Chapter 12 of Division 2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 218, as amended, Yee. Healing arts.

Existing law, the Acupuncture Licensure Act, establishes the Acupuncture Board and makes it responsible for enforcing and administering the act, including licensing persons who meet specified licensure requirements. Under the act, licensees are titled "acupuncturists," and are authorized to perform designated activities pursuant to their license. The unlawful practice of acupuncture, as specified, is a crime.

This bill would, commencing May 1, 2014, require the board to issue a certificate to practice as a traditional Chinese medicine traumatologist to an applicant who meets certain education, training, and clinical experience requirements and pays a ~~specified~~ *fee of an unspecified amount*. This bill would require the board to establish the California Traditional Chinese Medicine Traumatology Committee to provide advice and carry out specified duties, including investigation and

evaluation of whether an applicant meets those education, training, and clinical experience requirements.

The bill would set forth procedures for the renewal of an unexpired or expired certificate to perform traditional Chinese medicine traumatology and would establish ~~specified fees~~ *in unspecified amounts* in that regard.

This bill would make it an unfair business practice to use the title of “certified traditional Chinese medicine traumatologist” without meeting these certification requirements and would authorize the board to suspend or revoke a certificate for unprofessional conduct, certain fraudulent acts, or specified crimes committed by the certificate holder. The bill would also make it a crime to use the title of “certified traditional Chinese medicine traumatologist” without meeting these certification requirements and to fraudulently buy or sell a certificate for traditional Chinese medicine traumatology, thereby imposing a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 4935 of the Business and Professions  
2     Code is amended to read:  
3     4935. (a) (1) It is a misdemeanor, punishable by a fine of not  
4     less than one hundred dollars (\$100) and not more than two  
5     thousand five hundred dollars (\$2,500), or by imprisonment in a  
6     county jail not exceeding one year, or by both that fine and  
7     imprisonment, for any person who does not hold a current and  
8     valid license to practice acupuncture under this chapter, to hold  
9     himself or herself out as practicing or engaging in the practice of  
10    acupuncture, or to hold himself or herself out as a certified  
11    traditional Chinese medicine traumatologist or use the title of  
12    “certified traditional Chinese medicine traumatologist” without  
13    meeting the requirements of this chapter.

(2) It is a misdemeanor, punishable by a fine of not less than one hundred dollars (\$100) and not more than two thousand five hundred dollars (\$2,500), or by imprisonment in a county jail not exceeding one year, or by both that fine and imprisonment, for any person to fraudulently buy, sell, or obtain a license to practice acupuncture or a certificate for traditional Chinese medicine traumatology, or to violate the provisions of this chapter.

(b) Notwithstanding any other provision of law, any person, other than a physician and surgeon, a dentist, or a podiatrist, who is not licensed under this article but is licensed under Division 2 (commencing with Section 500), who practices acupuncture involving the application of a needle to the human body, performs any acupuncture technique or method involving the application of a needle to the human body, or directs, manages, or supervises another person in performing acupuncture involving the application of a needle to the human body is guilty of a misdemeanor.

(c) A person holds himself or herself out as engaging in the practice of acupuncture by the use of any title or description of services incorporating the words “acupuncture,” “acupuncturist,” “certified acupuncturist,” “licensed acupuncturist,” “Asian medicine,” “oriental medicine,” “traditional Chinese medicine,” or any combination of those words, phrases, or abbreviations of those words or phrases, by representing that he or she is trained, experienced, or an expert in the field of acupuncture, Asian medicine, or Chinese medicine, or by representing that he or she is trained, experienced, or an expert in the field of traditional Chinese medicine traumatology.

(d) Subdivision (a) shall not prohibit a person from administering acupuncture treatment as part of his or her educational training if he or she:

(1) Is engaged in a course or tutorial program in acupuncture, as provided in this chapter; or

(2) Is a graduate of a school of acupuncture approved by the board and participating in a postgraduate review course that does not exceed one year in duration at a school approved by the board.

SEC. 2. Article 3 (commencing with Section 4950) is added to Chapter 12 of Division 2 of the Business and Professions Code, to read:

Article 3. California Traditional Chinese Medicine  
Traumatologist

4950. As used in this article:

(a) “California certified traditional Chinese medicine traumatologist” means a person who has been certified by the California Traditional Chinese Medicine Traumatology Committee to perform traditional Chinese medicine traumatology.

(b) “Committee” means, notwithstanding Section 4925, the California Traditional Chinese Medicine Traumatology Committee.

(c) “Traditional Chinese medicine traumatology” includes a range of treatments to address both acute and chronic musculoskeletal conditions through stimulation of acupressure points. Techniques include, but are not limited to, brushing, kneading, rolling, pressing, rubbing, pushing, holding, and lifting the areas between each of the joints to open the body’s defensive chi and stimulate the energy movement in the meridians.

4950.1. (a) (1) On or before March 1, 2014, the board shall establish the California Traditional Chinese Medicine Traumatology Committee within the board. The committee shall consist of the following five members appointed by the board:

~~(1)~~

(A) One representative from the California Medical Association.

~~(2)~~

(B) One representative from the California Orthopaedic Association.

~~(3)~~

(C) One representative from the Medical Board of California.

~~(4)~~

(D) Two representatives from a traditional Chinese medicine traumatology clinical setting. These representatives shall be selected by professional societies, associations, or other entities, whose memberships are comprised solely of practitioners of traditional Chinese medicine traumatology. To qualify as a professional society or association, an entity shall have a dues paying membership in the state of at least 30 individuals for the last three years and shall have bylaws that require its members to comply with a code of ethics.

(2) *Members of the committee shall serve for a term of four years.*

1 (b) The board, in implementing this article, shall give specific  
2 consideration to the recommendations of the committee.

3 (c) (1) Pursuant to Section 4950.2, the committee shall meet  
4 and confer to determine an applicant's qualifications, as prescribed  
5 in Section 4950.2, including the level of experience and training  
6 needed to qualify for California traditional Chinese medicine  
7 traumatology certification.

8 (2) The committee shall advise the board on any other issues  
9 pursuant to this article.

10 4950.2. (a) The committee shall investigate all of the  
11 documentation provided by the applicant and verify its authenticity  
12 to evaluate whether an applicant meets the certification standards,  
13 including the level of education, experience, and training to  
14 sufficiently qualify for the traumatology certification, and shall  
15 report its findings and determination to the board.

16 (b) Commencing May 1, 2014, the board shall issue a certificate  
17 for certified traditional Chinese medicine traumatology to any  
18 person who makes an application to the board and meets all of the  
19 following requirements:

20 (1) Is at least 18 years of age.

21 (2) Is not subject to denial pursuant to Division 1.5 (commencing  
22 with Section 475).

23 (3) Furnishes satisfactory evidence of education, training, and  
24 clinical experience that meets one of the following standards:

25 (A) Passed an examination and received a certificate in  
26 traditional Chinese medicine traumatology for completing a  
27 curriculum in the subject. The curriculum for all applicants shall  
28 provide for adequate instruction in *each of* the following subjects:

29 (i) Human anatomy and physiology.

30 (ii) Pathology.

31 (iii) Western diagnosis on traumatological injury.

32 (iv) Clinical management and medical ethics.

33 (v) Basic theory of traditional Chinese medicine.

34 (vi) Comparison of traditional Chinese medicine and western  
35 medicine.

36 (vii) Meridian and acupoints.

37 (viii) Basic traditional Chinese medicine diagnosis.

38 (ix) Basic theory of traditional Chinese medicine traumatology.

39 (x) Traditional Chinese medicine diagnosis on traumatology.

1 (xi) Hands on Skills of Traditional Chinese Medicine  
2 Traumatology I.

3 (xii) Hands on Skills of Traditional Chinese Medicine  
4 Traumatology II.

5 (xiii) Chinese herbs and formulas for traumatology.

6 (xiv) Traditional Chinese medicine traumatology case study.

7 (xv) One thousand hours in a clinical internship on traditional  
8 Chinese medicine traumatology.

9 (B) In the case of an applicant who completed an apprenticeship  
10 as a traditional Chinese medicine traumatologist for 10 years prior  
11 to January 1, 2014, furnishes satisfactory evidence of completing  
12 education, training, and at least 10 years clinical experience in  
13 traditional Chinese medicine traumatology.

14 (C) In the case of an applicant who has completed education  
15 and training outside of the United States or Canada, furnishes  
16 satisfactory evidence of completing education, training, and at  
17 least 10 years clinical experience in traditional Chinese medicine  
18 traumatology.

19 4950.3. (a) An applicant for traditional Chinese medicine  
20 traumatology certification shall file an application for that  
21 certificate with the board.

22 (b) When submitting his or her application to the board, the  
23 applicant shall pay an application fee in a reasonable amount  
24 determined by the board, not to exceed ~~two hundred dollars (\$200)~~  
25 \_\_\_\_\_ dollars (\$\_\_\_\_\_), for the regulatory cost to the board of  
26 processing the application.

27 (c) A certified traditional Chinese medicine traumatologist shall  
28 renew his or her certificate every five years.

29 (d) An expired certificate may be renewed at any time within  
30 three years after its expiration. The holder of the certificate shall  
31 pay all accrued and unpaid renewal fees, plus a delinquency fee,  
32 according to the following:

33 (1) An annual renewal fee of ~~one hundred dollars (\$100)~~ \_\_\_\_\_  
34 dollars (\$\_\_\_\_\_).

35 (2) A delinquency fee of ~~twenty-five dollars (\$25)~~ \_\_\_\_\_ dollars  
36 (\$\_\_\_\_\_).

37 (3) A fee for a duplicate or replacement engraved wall certificate  
38 of ~~fifteen dollars (\$15)~~ \_\_\_\_\_ dollars (\$\_\_\_\_\_).

1 (4) A fee for a duplicate or replacement renewal ~~receipt/pocket~~  
2 ~~receipt or pocket~~ certificate of ~~ten dollars (\$10)~~ \_\_\_\_\_ dollars  
3 (\$\_\_\_\_\_).

4 (e) Moneys received under this section shall be deposited in the  
5 Acupuncture Fund for the purposes of carrying out this article.

6 4950.4. It is an unfair business practice for any person to hold  
7 himself or herself out as a certified traditional Chinese medicine  
8 traumatologist or to use the title of “certified traditional Chinese  
9 medicine traumatologist” without meeting the requirements of this  
10 article.

11 4950.5. (a) A California certified traditional Chinese medicine  
12 traumatologist shall not practice medicine, as provided in Section  
13 2052.

14 (b) A California certified traditional Chinese medicine  
15 traumatologist shall not practice within the scope of activities  
16 regulated by the State Board of Chiropractic Examiners.

17 SEC. 3. Section 4955 of the Business and Professions Code is  
18 amended to read:

19 4955. The board may deny, suspend, or revoke, or impose  
20 probationary conditions upon, the license of any acupuncturist or  
21 the certificate of any traditional Chinese medicine traumatologist  
22 if he or she is guilty of unprofessional conduct. As used in this  
23 section, “licensee” includes a certified traditional Chinese medicine  
24 traumatologist.

25 Unprofessional conduct shall include, but not be limited to, the  
26 following:

27 (a) Using or possessing any controlled substance as defined in  
28 Division 10 (commencing with Section 11000) of the Health and  
29 Safety Code, or dangerous drug or alcoholic beverage to an extent  
30 or in a manner dangerous to himself or herself, or to any other  
31 person, or to the public, and to an extent that the use impairs his  
32 or her ability to engage in the practice of acupuncture or  
33 traumatology with safety to the public.

34 (b) Conviction of a crime substantially related to the  
35 qualifications, functions, or duties of an acupuncturist or certified  
36 traditional Chinese medicine traumatologist, the record of  
37 conviction being conclusive evidence thereof.

38 (c) False or misleading advertising.

1 (d) Aiding or abetting in, or violating or conspiring in, directly  
2 or indirectly, the violation of the terms of this chapter or any  
3 regulation adopted by the board pursuant to this chapter.

4 (e) Except for good cause, the knowing failure to protect patients  
5 by failing to follow infection control guidelines of the board,  
6 thereby risking transmission of bloodborne infectious diseases  
7 from licensee to patient, from patient to patient, and from patient  
8 to licensee. In administering this subdivision, the board shall  
9 consider referencing the standards, regulations, and guidelines of  
10 the State Department of Public Health developed pursuant to  
11 Section 1250.11 of the Health and Safety Code and the standards,  
12 regulations, and guidelines pursuant to the California Occupational  
13 Safety and Health Act of 1973 (Part 1 (commencing with Section  
14 6300) of Division 5 of the Labor Code) for preventing the  
15 transmission of HIV, hepatitis B, and other bloodborne pathogens  
16 in health care settings. As necessary, the board shall consult with  
17 the Medical Board of California, the California Board of Podiatric  
18 Medicine, the Dental Board of California, the Board of Registered  
19 Nursing, and the Board of Vocational Nursing and Psychiatric  
20 Technicians *of the State of California*, to encourage appropriate  
21 consistency in the implementation of this subdivision.

22 The board shall seek to ensure that licensees are informed of the  
23 responsibility of licensees and others to follow infection control  
24 guidelines, and of the most recent scientifically recognized  
25 safeguards for minimizing the risk of transmission of bloodborne  
26 infectious diseases.

27 (f) The use of threats or harassment against any patient or  
28 licensee for providing evidence in a disciplinary action, other legal  
29 action, or in an investigation contemplating a disciplinary action  
30 or other legal action.

31 (g) Discharging an employee primarily for attempting to comply  
32 with the terms of this chapter.

33 (h) Disciplinary action taken by any public agency for any act  
34 substantially related to the qualifications, functions, or duties of  
35 an acupuncturist, certified traditional Chinese medicine  
36 traumatologist, or any professional health care licensee.

37 (i) Any action or conduct that would have warranted the denial  
38 of the acupuncture license or the traumatology certificate.

39 (j) The violation of any law or local ordinance on a licensee's  
40 business premises by a licensee's employee or a person who is



1 working under the licensee's professional license or business  
2 permit, that is substantially related to the qualifications, functions,  
3 or duties of the licensee. These violations shall subject the licensee  
4 who employed the individuals, or under whose acupuncturist  
5 license or traumatology certificate the employee is working, to  
6 disciplinary action.

7 (k) The abandonment of a patient by the licensee without written  
8 notice to the patient that treatment is to be discontinued and before  
9 the patient has had a reasonable opportunity to secure the services  
10 of another practitioner.

11 (l) The failure to notify the board of the use of any false,  
12 assumed, or fictitious name other than the name under which he  
13 or she is licensed as an individual to practice acupuncture or as an  
14 individual certified in traditional Chinese medicine traumatology.

15 SEC. 4. Section 4955.1 of the Business and Professions Code  
16 is amended to read:

17 4955.1. The board may deny, suspend, revoke, or impose  
18 probationary conditions upon the license of any acupuncturist or  
19 certificate of any certified traditional Chinese medicine  
20 traumatologist if he or she is guilty of committing a fraudulent act,  
21 including, but not limited to, the following:

22 (a) Securing a license by fraud or deceit.

23 (b) Committing a fraudulent or dishonest act as an acupuncturist  
24 or certified traditional Chinese medicine traumatologist.

25 (c) Committing any act involving dishonesty or corruption with  
26 respect to the qualifications, functions, or duties of an acupuncturist  
27 or certified traditional Chinese medicine traumatologist.

28 (d) Altering or modifying the medical record of any person,  
29 with fraudulent intent, or creating any false medical record.

30 (e) Failing to maintain adequate and accurate records relating  
31 to the provision of services to his or her patients.

32 SEC. 5. Section 4955.2 of the Business and Professions Code  
33 is amended to read:

34 4955.2. The board may deny, suspend, revoke, or impose  
35 probationary conditions upon the license of any acupuncturist or  
36 certified traditional Chinese medicine traumatologist if he or she  
37 is guilty of committing any one of the following:

38 (a) Gross negligence.

39 (b) Repeated negligent acts.

40 (c) Incompetence.

SEC. 6. Section 4956 of the Business and Professions Code is amended to read:

4956. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge that is substantially related to the qualifications, functions, or duties of an acupuncturist or certified traditional Chinese medicine traumatologist is deemed to be a conviction within the meaning of this chapter.

The board may order a license or certificate suspended or revoked, or may deny a license or certificate, or may impose probationary conditions upon a license or certificate, when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

SEC. 7. Section 4960.2 of the Business and Professions Code is amended to read:

4960.2. The board in all cases of revocation shall certify the fact of the revocation, under the seal of the board, to the business licensing entity of the cities or counties in which the license of the acupuncturist or the certificate of the traditional Chinese medicine traumatologist has been revoked. The record of the revocation made by the county or city clerk shall be sufficient evidence of the revocation, and of the regularity of all proceedings of the board in the matter of the revocation.

SEC. 8. Section 4961 of the Business and Professions Code is amended to read:

4961. (a) Every person who is now or hereafter licensed to practice acupuncture or certified to practice traditional Chinese medicine traumatology in this state shall register, on forms prescribed by the board, his or her place of practice, or, if he or she has more than one place of practice, all of the places of practice. If the licensee or certificate holder has no place of practice, he or she shall notify the board of that fact. A person licensed or certified by the board shall register within 30 days after the date of his or her licensure or certification.

(b) A licensee or certificate holder shall post his or her license or certificate in a conspicuous location in his or her place of

1 practice at all times. If an acupuncturist or certified traditional  
2 Chinese medicine traumatologist has more than one place of  
3 practice, he or she shall obtain from the board a duplicate license  
4 or certificate for each additional location and post the duplicate  
5 license or certificate at each location.

6 (c) Any licensee or certificate holder that changes the location  
7 of his or her place of practice shall register each change within 30  
8 days of making that change. If a licensee or certificate holder fails  
9 to notify the board of any change in the address of a place of  
10 practice within the time prescribed by this section, the board may  
11 deny renewal of licensure or certification. An applicant for renewal  
12 of licensure or certification shall specify in his or her application  
13 whether or not there has been a change in the location of his or  
14 her place of practice and, if so, the date of that change. The board  
15 may accept that statement as evidence of the change of address.

16 SEC. 9. Section 4964.5 is added to the Business and Professions  
17 Code, immediately following Section 4964, to read:

18 4964.5. The provisions of this article apply to both licensed  
19 acupuncturists and certified traditional Chinese medicine  
20 traumatologists.

21 SEC. 10. Section 4965 of the Business and Professions Code  
22 is amended to read:

23 4965. (a) (1) A license to practice acupuncture issued pursuant  
24 to this chapter shall expire on the last day of the birth month of  
25 the licensee during the second year of a two-year term, if not  
26 renewed.

27 (2) The board shall establish and administer a birth date renewal  
28 program for purposes of this subdivision.

29 (3) To renew an unexpired license, the holder shall apply for  
30 renewal on a form provided by the board and pay the renewal fee  
31 fixed by the board.

32 (b) A certificate for traditional Chinese medicine traumatology  
33 issued pursuant to this chapter shall expire five years after the date  
34 of issuance, if not renewed. To renew an unexpired certificate, the  
35 holder shall apply for renewal on a form provided by the board  
36 and pay the renewal fee set forth in Section 4950.3.

37 SEC. 11. Section 4966 of the Business and Professions Code  
38 is amended to read:

39 4966. (a) Except as provided in Section 4969, a license to  
40 practice acupuncture that has expired may be renewed at any time

1 within three years after its expiration by filing an application for  
2 renewal on a form provided by the board, paying all accrued and  
3 unpaid renewal fees, and providing proof of completing continuing  
4 education requirements. If the license is not renewed prior to its  
5 expiration, the acupuncturist, as a condition precedent to renewal,  
6 shall also pay the prescribed delinquency fee.

7 (b) Except as provided in Section 4969, a certificate for  
8 traditional Chinese medicine traumatology that has expired may  
9 be renewed at any time within three years after its expiration by  
10 filing an application for renewal on a form provided by the board,  
11 and paying all accrued and unpaid renewal fees. If the certificate  
12 is not renewed prior to its expiration, the traditional Chinese  
13 medicine traumatologist, as a condition precedent to renewal, shall  
14 also pay a delinquency fee, set in accordance with Section 163.5.

15 (c) Renewal under this section shall be effective on the date on  
16 which the application is filed, on the date on which the renewal  
17 fee is paid, or on the date the delinquency fee is paid, whichever  
18 occurs last. If so renewed, the license or certificate shall continue  
19 in effect through the expiration date provided in Section 4965,  
20 after the effective date of the renewal, when it shall expire and  
21 become invalid if it is not again renewed.

22 SEC. 12. Section 4967 of the Business and Professions Code  
23 is amended to read:

24 4967. A person who fails to renew his or her license or  
25 certificate within three years after its expiration may not renew it,  
26 and it may not be restored, reissued, or reinstated thereafter, but  
27 that person may apply for and obtain a new license or certificate  
28 if he or she meets all of the following requirements:

29 (a) Has not committed any acts or crimes constituting grounds  
30 for denial of licensure or certification under Division 1.5  
31 (commencing with Section 475).

32 (b) If an acupuncturist takes and passes the examination, if any,  
33 which would be required of him or her if an initial application for  
34 licensure was being made, or, if an acupuncturist or certified  
35 traditional Chinese medicine traumatologist otherwise establishes  
36 to the satisfaction of the board that, with due regard for the public  
37 interest, he or she is qualified to practice as an acupuncturist or  
38 certified traditional Chinese medicine traumatologist.

39 (c) Pays all of the fees that would be required if an initial  
40 application for licensure or certification was being made.

1 (d) The board may provide for the waiver or refund of all or  
2 any part of an examination fee in those cases in which a license  
3 to practice acupuncture is issued without an examination pursuant  
4 to this section.

5 SEC. 13. Section 4969 of the Business and Professions Code  
6 is amended to read:

7 4969. (a) A suspended license or certificate is subject to  
8 expiration and shall be renewed as provided in this article, but the  
9 renewal does not entitle the acupuncturist or certified traditional  
10 Chinese medicine traumatologist, while the license or certificate  
11 remains suspended, and until it is reinstated, to engage in the  
12 practice of acupuncture or traditional Chinese medicine  
13 traumatology, or in any other activity or conduct in violation of  
14 the order or judgment by which the license or certificate was  
15 suspended.

16 (b) A revoked license or certificate is subject to expiration as  
17 provided in this article, but it may not be renewed. If it is reinstated  
18 after its expiration, the former licensee or certificate holder, as a  
19 condition to reinstatement, shall pay a reinstatement fee in an  
20 amount equal to the renewal fee in effect on the last regular renewal  
21 date before the date on which the license or certificate was  
22 reinstated, plus the delinquency fee, if any, accrued at the time of  
23 its expiration.

24 SEC. 14. No reimbursement is required by this act pursuant to  
25 Section 6 of Article XIII B of the California Constitution because  
26 the only costs that may be incurred by a local agency or school  
27 district will be incurred because this act creates a new crime or  
28 infraction, eliminates a crime or infraction, or changes the penalty  
29 for a crime or infraction, within the meaning of Section 17556 of  
30 the Government Code, or changes the definition of a crime within  
31 the meaning of Section 6 of Article XIII B of the California  
32 Constitution.